

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Multi-Association Group (MAG) Plan for)	CC Docket No. 00-256
Regulation of Interstate Services of)	
Non-Price Cap Incumbent Local Exchange)	
Carriers and Interexchange Carriers)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Access Charge Reform for)	CC Docket No. 98-77
Incumbent Local Exchange Carriers)	
Subject to Rate-of-Return Regulation)	
)	
Prescribing the Authorized Rate of Return for)	CC Docket No. 98-166
Interstate Services of Local Exchange Carriers)	

**PETITION FOR RECONSIDERATION OF THE
COMPETITIVE UNIVERSAL SERVICE COALITION**

The Competitive Universal Service Coalition ("CUSC"), 1/ by counsel and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, hereby respectfully seeks reconsideration of certain aspects of the Commission's Order in the above-captioned proceedings. 2/

1/ The Competitive Universal Service Coalition includes a number of diverse wireless and wireline competitive carriers (and their trade associations) that provide universal service or are considering doing so.

2/ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 (rel. Nov. 8, 2001) ("MAG Order" or "MAG FNPRM," depending on section of document referenced).

CUSC agrees with much of the Commission's implementation of the MAG plan, and the other initial steps taken in this proceeding to reform access charges in rural areas. For the most part, we agree with the Commission's decisions to accept the parts of the MAG plan that call for replacement of implicit subsidies with explicit, portable funding, while at the same time rejecting most aspects of the plan that would excessively increase the size of the fund, undermine competitive neutrality, and/or allow rural incumbent local exchange carriers ("ILECs") opportunities to game the regulatory system. Nonetheless, there are some portions of the *MAG Order* that are not consistent with the development of competition in rural areas, and should be revisited.

Specifically, the Commission should reconsider its decision to allow rural ILECs the same latitude to disaggregate subscriber line charges and access charge-related universal service support as they were given for disaggregation plans under rules recently adopted to reform universal service support for rural telephone companies. ^{3/} The new rules adopted in the *MAG Order* present rural ILECs the same opportunities to manipulate the regulatory system to benefit themselves – and disadvantage their consumers and competitors – that CUSC protested in its petition

^{3/} *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report & Order and Twenty-Second Order on Reconsideration in CC Docket No. 96-45 and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("*RTF Order*").

for reconsideration of the *RTF Order*. ^{4/} The Commission should also reconsider its decisions to not impose a cap on the new interstate common line support (“ICLS”) fund and to not immediately and completely terminate long-term support (“LTS”). These decisions will lead to unnecessary growth in the amount of support required for rural areas, while serving as both an unwarranted revenue guarantee for rural ILECs, and an impermissible continuation of implicit support in violation of the Act.

I. THE COMMISSION SHOULD NOT ALLOW RURAL ILECS TO GAME THE SYSTEM FOR SLC DEAVERAGING OR ICLS DISAGGREGATION IN AN ANTI-COMPETITIVE MANNER

The Commission’s decisions in the *MAG Order* to allow rural ILECs to deaverage SLCs and disaggregate ICLS under disaggregation plans adopted pursuant to the *RTF Order* present the same potential for anti-competitive abuse as do the rules adopted in the *RTF Order*. Because granting rural ILECs too much discretion to dictate SLC or support levels in sub-study areas could result in ILEC-imposed barriers to competitive entry, the FCC should revisit this aspect of the *MAG Order*.

In CUSC’s Petition for Reconsideration of the *RTF Order* (attached hereto), we pointed out that, as adopted, the *RTF Order*’s rules for geographic disaggregation could be an effective tool for a rural ILEC to deter competitive entry, in either the relatively low-cost portion(s) of its study area, or in its study area as a whole. Such efforts are enabled by the grant of virtually unfettered rights to rural

^{4/} Petition for Reconsideration of the Competitive Universal Service Coalition, in CC Docket Nos. 96-45 & 00-256, filed July 5, 2001; *Petitions for Reconsideration of Action in Rulemaking Proceeding*, Public Notice, Report No. 2495 (July 10, 2001).

ILECs to subdivide study areas and to decide how much funding each area receives, while competitive carriers have essentially no rights to initiate disaggregation, or to suggest boundaries or funding amounts for sub-study areas. The rules adopted in the *MAG Order* nonetheless allow rate-of-return carriers to “deaverage SLC rates in accordance with universal service support disaggregation” plans established pursuant to the *RTF Order*. ^{5/} The rules further call for “the plan for geographic disaggregation and targeting [of support adopted in the *RTF Order* to] also apply to [ICLS].” ^{6/} Allowing rural ILECs to tie SLC deaveraging and ICLS disaggregation to study area disaggregation rights that they can abusively wield serves only to increase their ability to impede or forestall competition from new entrants.

This is so because undesirable consequences could arise if a rural ILEC’s study area is unduly large and federal universal service support is averaged throughout, or if the rural ILEC improperly manipulates the boundaries and amount of support in sub-study areas. These consequences include:

- (i) competitors may be unable to enter certain markets in the study area because they are capable of serving part, but not all, of the study area; ^{7/}
- (ii) per-line funding in the higher-than-average-cost portion of the study area may be inadequate, leading prospective competitive entrants to focus efforts elsewhere and avoid serving the under-funded area;
- (iii) per-line funding in the lower-than-average-cost portion of the study area may be excessive and over-stimulate competitive entry; and

^{5/} See *MAG Order*, ¶ 57.

^{6/} *Id.*, ¶ 143.

^{7/} See 47 U.S.C. § 214(e)(5) (requiring competitive carriers seeking designation as an eligible telecommunications carrier (“ETC”) in an area served by a rural ILEC to serve the whole of the incumbent’s study area).

- (iv) the complexity and lack of transparency of SLC levels and support amounts in rural ILEC study areas would render competitive business planning impossible and thereby thwart competitive entry.

The *RTF Order* failed to ensure that ILECs do not take advantage of the right to disaggregate their study areas so as to deny competitive carriers a reasonable opportunity to serve the highest-cost portions of rural ILECs' study areas, where the greatest amount of funding ought to be available. Instead, rural ILECs were granted the latitude to direct excessive funds *not* to areas most in need of support, but to those where competitive entry is least likely; they can also direct inadequate support to areas where competition is more likely. In addition, the *RTF Order* did nothing to *require* disaggregation of excessively large rural study areas, which can serve as a barrier to entry for carriers that could be competitive ETCs but for their inability to serve the entirety of an oversized study area. The *MAG Order* effectively sowed the seeds for these problems to become not only universal service issues, but access charge issues as well.

CUSC recommended several pro-competitive modifications to the rules adopted in the *RTF Order* to remedy these problems. First, whenever a rural ILEC disaggregates its study area for funding purposes, the study area should automatically disaggregate for ETC designation purposes as well. Second, competitive ETCs should have the same right as ILECs to initiate study area disaggregation. Third, there must be strict and specific rules governing how funding in each sub-zone is calculated in order to ensure an approach that is cost-justified, with proponents of disaggregation below the wire center level being required to submit their plans for disaggregation to a state public utility commission and/or the FCC for approval.

Thus, unless and until the Commission acts on the petitions for reconsideration of the *RTF Order* by adopting safeguards such as those suggested above to prevent anti-competitive behavior by rural ILECs, relying on the disaggregation rules adopted in the *RTF Order* for access charge reform is inappropriate (or, at best, premature). CUSC therefore respectfully requests that the Commission reconsider using the disaggregation rules adopted in the *RTF Order* as the basis for the deaveraging and disaggregation rules adopted in this proceeding. In addition (or in the alternative), the Commission should expeditiously resolve CUSC's petition for reconsideration of the *RTF Order* to ensure that implementation of the MAG plan does not open itself to the same anti-competitive abuses that are possible under the implementation of the Rural Task Force's recommendation.

II. THE COMMISSION SHOULD PROACTIVELY ENSURE THAT RURAL ACCESS CHARGE REFORM DOES NOT RESULT IN EXCESSIVE SUPPORT

The Commission should reconsider its decisions not to impose a cap on the new ICLS fund and not to immediately terminate LTS. ^{8/} Both these decisions will result in the provision of excessive support inconsistent with statutory dictates. The provision of such too much support subjects consumers and carriers around the country to excessive contribution burdens. Moreover, the new ICLS fund serves an identical function to that previously served by LTS, so the latter fund is duplicative and should be eliminated immediately. CUSC therefore submits that the

^{8/} MAG Order, ¶¶ 132 (ICLS), 139 (LTS).

Commission should subject the overall size and/or the rate of growth of the ICLS fund should to caps, and should immediately eliminate LTS.

A. The Commission Should Adopt a Cap on the ICLS Fund

As presently structured, the ICLS fund and its absence of a cap provide, in essence, a revenue guarantee for rural ILECs. This is inappropriate for a number of reasons. First, lack of a cap, and the resulting, potentially unlimited fund growth, translate directly into increasing the contribution burden on other carriers and their customers for the sole purpose of sheltering rural ILECs from the loss of revenues due to competitive entry (or other developments) in their service areas. This violates competitive neutrality by guaranteeing incumbents a revenue “war chest” that will never be available to their competitors. More significantly, it is at odds with the underlying purpose of the Act, which is to ensure that consumers in rural and high-cost areas realize the benefits of competition. ^{9/} A rural ILEC revenue guarantee also harms consumers by eliminating incentives for carriers to provide service efficiently and in a manner that best meets customers’ needs. ^{10/}

^{9/} See, e.g., *RTF Order*, 16 FCC Rcd at 11256, ¶ 24; *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11579, ¶ 164 (1998) (noting that disqualifying carriers providing service through unbundled network elements from eligibility for universal service support would put them at a “disadvantage to carriers using other entry strategies,” thus undermining “the principles of competitive neutrality underlying the Act” and “disincent[ing] entry into high-cost areas . . . [and] defeating Congress's intent to bring the fullest range of telecommunications services ‘to all regions of the Nation.’”) (internal quotation omitted).

^{10/} See *MAG Order*, ¶ 204 (recognizing that “price cap regulation contains an inherent incentive for maximizing efficiency . . . not present under rate-of- return regulation”). CUSC intends in its comments on the *MAG FNPRM* to elaborate on the need – and appropriate mechanisms – for transitioning rate-of-return carriers

[footnote continues]

CUSC submits that the overall size and/or rate of growth of the ICLS fund should be subject to caps, similar to the \$650 million cap on interstate access universal service support established in the CALLS plan for larger ILECs, as well as the existing cap adopted in the *RTF Order* on the growth of the High Cost Loop fund that rural ILECs receive. ^{11/} CUSC submits that three types of caps should be applied to ICLS funding: (1) per-line caps, (2) per-carrier caps, and (3) a national cap. First, per-line funding in any given rural ILEC study area should not increase after the first year of funding. Second, the total funding any individual rural ILEC receives should be limited to ensure it does not increase the ILEC's rate of return or total amount of interstate revenues (adjusted to account for inflation and growth in lines). Finally, the ICLS fund should be limited by a national flat dollar amount. Such caps are needed to ensure that the high-cost funding system complies with the statutory mandates that funding be "specific" and "predictable." ^{12/}

to price-based incentive regulation in reforming the federal universal service and access charge regulatory regimes. See *MAG FNPRM*, ¶¶ 206-210.

^{11/} *RTF Order*, 16 FCC Rcd at 11259-68, ¶¶ 31-53. CUSC acknowledges that the U.S. Court of Appeals for the Fifth Circuit has remanded the interstate access universal service fund to the Commission for justification of the \$650 million cap. *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313, 327-28 (5th Cir. 2001) ("*TOPUC v. FCC*"). CUSC believes that, if necessary, the Commission could adopt in principle a cap on ICLS in response to this petition, and use the opportunity presented by the *TOPUC* remand to determine the amount of the cap for ICLS.

^{12/} 47 U.S.C. § 254(b)(5).

B. The Commission Should Immediately Terminate LTS, Which Is Duplicative of ICLS

Though the *MAG Order* suggests that LTS should be phased out by mid-2003, 13/ CUSC submits that it should be terminated immediately. In the *MAG Order*, the Commission acknowledges several reasons why LTS should be merged into the ICLS. 14/ These include the facts that (i) once implemented ICLS will serve the same function as LTS, (ii) the need for LTS and the NECA pool as risk-sharing mechanisms will be reduced or eliminated by conversion to explicit support, and (iii) it would promote administrative simplicity. 15/ This is consistent with CUSC's observation in its comments in this proceeding that "permitting both funds to co-exist would result in unjustified double recovery" and "neither the [] fund nor any other universal service mechanism should be used to subsidize rural ILECs' special access rates." 16/ The elimination of LTS is also necessary to comply with the mandate in *COMSAT Corp. v. FCC* that all universal service support – including that embedded in non-cost-based access charges – must be explicit. 17/ All told, the Commission must reverse its decision in the *MAG Order* and eliminate LTS once ICLS funding becomes available – and should do so immediately via reconsideration,

13/ *MAG Order*, ¶ 140; see *id.*, ¶¶ 273-76 (proposing phase-out of LTS).

14/ *Id.*, ¶¶ 139-140.

15/ *Id.*

16/ See Comments of the Competitive Universal Service Coalition, at 10, filed February 26, 2001, on *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 01-8 (rel. Jan. 12, 2001).

17/ 250 F.3d 931, 938-39 (5th Cir. 2001) ("§ 254(e) does not permit the [FCC] to maintain any implicit subsidies") (internal quotation and citation omitted).

rather than waiting for the conclusion of proceedings in response to the Further Notice of Proposed Rulemaking.

CONCLUSION

For the foregoing reasons, CUSC submits that the Commission should modify the rules adopted in the *MAG Order* as set forth above.

Respectfully submitted,

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December 31, 2001

ATTACHMENT: PETITION FOR RECONSIDERATION OF THE COMPETITIVE
UNIVERSAL SERVICE COALITION, IN CC DOCKET NOS. 96-45 & 00-256

**Before the
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Exchange Carriers and)	
Interexchange Carriers)	

**PETITION FOR RECONSIDERATION
OF THE COMPETITIVE UNIVERSAL SERVICE COALITION**

**COMPETITIVE UNIVERSAL
SERVICE COALITION**

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July 5, 2001

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**PETITION FOR RECONSIDERATION
OF THE COMPETITIVE UNIVERSAL SERVICE COALITION**

The Competitive Universal Service Coalition, ("CUSC"), 18/ by its attorneys, respectfully submits this petition for reconsideration of the Commission's Fourteenth Report & Order ("*Order*") 19/ relating to the recommendations of the Rural Task Force ("RTF") in the above-captioned proceedings.

18/ The Competitive Universal Service Coalition includes the following companies and associations: Association for Local Telecommunications Services; Competitive Telecommunications Association; Dobson Communications Corporation; Nucentrix Broadband Networks, Inc., Personal Communications Industry Association; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; Western Wireless Corporation; and the Wireless Communications Association.

19/ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report & Order and Twenty-Second Order on Reconsideration in CC Docket No. 96-45 and Report & Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) ("*Order*").

INTRODUCTION AND SUMMARY

CUSC urges the Commission to reconsider the *Order* in two principal respects. First, the *Order* failed to address one of the RTF's most important recommendations: to improve the portability of rural universal service support and to make the universal service system more transparent to facilitate competitive entry. The Commission should remedy this most unfortunate oversight, as discussed below.

Second, the Commission should reconsider its decision to adopt the RTF's recommendations regarding geographic disaggregation and targeting of high-cost universal service support without modifying those rules to be more pro-competitive. As they currently stand, these rules create too great an opportunity for an incumbent carrier to manipulate the disaggregation and targeting of support in an anti-competitive manner.

CUSC urges the Commission to reconsider its decision and establish study area disaggregation rules that are structured to promote, not impede, fair competition. Given the impending deadlines for rural incumbent local exchange carriers to select one of the "options" provided by the *Order*, it is critically important that reconsideration of these rules proceed in a timely and expeditious manner.

I. AS THE RTF RECOMMENDED, THE COMMISSION SHOULD IMPROVE THE PORTABILITY AND TRANSPARENCY OF RURAL UNIVERSAL SERVICE FUNDING

Among the most important RTF recommendations were that the Commission should adopt additional measures to make the funding structure more competitively neutral, portable, and transparent. Specifically, the RTF recommended that the Commission:

- Continue to adhere to the principle that all universal service support be portable among all eligible telecommunications carriers (“ETCs”), including competitive ETCs as well as incumbent local exchange carriers (“ILECs”); 20/
- Reduce the time lag between the dates that competitive ETCs report their lines and receive support with respect to those lines; 21/
- Establish a more competitively neutral system of reporting revenue and receiving support that would treat incumbent carriers and competitive entrants equally; 22/ and
- Ensure that the per-line amount of funding available in each geographic area is readily available and easily identifiable. 23/

20/ Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, rel. Sept. 29, 2000 (“RTF Recommendation”) at 16, 37-39; *Mission Statement, Objectives and Principles for Developing a Recommendation*, Rural Task Force Principles for Developing Recommendations (Dec. 12, 1998) at www.wuttc.wa.gov/rtf.

21/ RTF Recommendation at 38.

22/ *Id.* at 37-38.

23/ *Id.*; Competition and Universal Service, Rural Task Force White Paper 5, at 18 (rel. Sept. 2000), available at <http://www.wuttc.wa.gov/rtf>.

While the *Order* addressed some of these recommendations, 24/ it overlooked many others, 25/ and failed to respond to the comments of CUSC 26/ and other parties. For example, it did nothing to cure the current lack of transparency in the system, leaving in place a system under which it is extremely difficult to obtain information on how much funding is available per line, per month, in any specific geographic location. Nor did the *Order* do anything to establish a competitively neutral system of reporting and disbursing revenue, leaving in place divergent rules that fail to ensure equal treatment of all ETCs.

These oversights could harm the public interest. While competition in the provision of universal service will be extremely beneficial to consumers in rural areas, as the Commission has repeatedly recognized, 27/ such competition cannot flourish without policy measures to

24/ E.g., *Order*, ¶¶ 134-35.

25/ See, e.g., *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998) (“agency must . . . demonstrate the rationality of its decisionmaking process by responding to those comments that are relevant and significant.”); *Professional Pilots Federation v. FAA*, 118 F.3d 758, 763 (D.C. Cir. 1997); *Simpson v. Young*, 854 F.2d 1429, 1434 (D.C. Cir. 1988); *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987).

26/ See CUSC Reply Comments on RTF Recommendation at 13-14 (discussing need for transparency in ETC revenue reporting and receipt of support); see also Letter from David L. Sieradzki, Counsel for CUSC, to Magalie Roman Salas, Secretary, Federal Communications Commission, April 11, 2001 (transmitting proposed draft rules implementing RTF recommendations regarding, *inter alia*, portability and transparency issues related to competitive ETCs).

27/ *Order*, ¶ 10 (“the flexible plan for disaggregating and targeting support adopted in this *Order* will facilitate competitive entry into high-cost areas, bringing the benefits of competition to consumers in rural areas”); *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48, 55, ¶ 17 (CCB 2000) (“*Western Wireless Wyoming ETC Designation*”) (“Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies”); cf., *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of*

[footnote continues]

ensure a universal service funding system that is open to competitive entrants. 28/

On reconsideration, the Commission should remedy the *Order's* failure to address many of the RTF's recommendations regarding competitive neutrality. In particular, CUSC submitted a number of specific suggestions for how to implement the RTF's more general recommendations. Thus, on reconsideration, the Commission should adopt rules providing for:

Greater transparency. CUSC urges the Commission to require USAC to clearly publish and make prominently available on its website, the following information: (i) geographic boundaries of wire centers, study areas, 29/ and sub-zones within study areas, and (ii) the total amount of funding available in each specific geographic location. The Commission should also require completion of this task prior to allowing any disbursement of universal service funding. By establishing this requirement and

the South Dakota Public Utilities Commission, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15181, ¶ 31 (2000) (“*ETC Declaratory Ruling*”) (“competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers”) (quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8803, ¶ 50 (1997)).

28/ *ETC Declaratory Ruling*, 15 FCC Rcd at 15173, ¶ 12 (“A new entrant faces a substantial barrier to entry if the [ILEC] is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas.”).

29/ Similar geographic-based information is compiled for numerous purposes in the Commission's Universal Licensing System and other databases, and CUSC believes that such capabilities can be readily applied in the universal service context.

ordering its immediate implementation, the Commission will allow *all* ETCs – not just ILECs – to have full information in a timely manner.

Equality in reporting requirements. CUSC urges the Commission to require that substantive universal service funding information be reported within identical time periods for both competitive ETCs and rural ILECs, just as they are for competitive ETCs and non-rural ILECs. CUSC submitted draft rules that would have achieved this result; the Commission should adopt rules to achieve such a result.

Avoid state certification requirements for competitive ETCs. The *Order* adopted a rule that imposes additional barriers to competitive ETCs' ability to obtain funding – a requirement to obtain certification from state commissions that the carrier is complying with Section 254(e) of the Act, even though competitive ETCs are not subject to comprehensive rate regulation by state commissions. On reconsideration, the Commission should undo this unnecessary requirement. Instead, competitive ETCs should be permitted to self-certify their own compliance with section 254(e). Self-certification should not be limited to the narrow class of carriers that are not subject to state jurisdiction pursuant to section 214(e)(6), but should extend to all competitive ETCs. Further, CUSC would not object to also allowing ILECs to self-certify their compliance with section 254(e) as well.

By providing greater transparency of funding information, establishing equal reporting requirements for all types of carriers, and

eliminating unnecessary state certification requirements for competitive ETCs, the Commission will make the federal universal service system more consistent with the emergence and growth of competition.

II. THE COMMISSION SHOULD ADOPT MORE PRO-COMPETITIVE RULES ON GEOGRAPHIC DISAGGREGATION OF RURAL STUDY AREAS

The RTF appropriately made substantial efforts regarding study area disaggregation. CUSC applauds these efforts, as we generally support efficient and cost-based disaggregation of rural study areas. Unfortunately, however, the RTF did not adequately appreciate the competitive significance of the way in which disaggregation is structured. Rather than remedying the competitive defects of the original proposal, the *Order* adopted it with few modifications. On reconsideration, the Commission should ensure that geographic disaggregation proceeds in a manner that is consistent with competition.

The RTF correctly recognized the competitive significance of geographic disaggregation of rural ILEC study areas. If a rural ILEC's study area is unduly large and federal universal service support is averaged throughout the study area, three undesirable consequences may occur. First, prospective competitors may be unable to enter certain markets within the study area because they are capable of serving part, but not all, of the study area. Second, per-line funding in the higher-than-average portion of the study area may be inadequate, leading prospective competitive entrants to

focus their efforts elsewhere and to try to avoid serving that under-funded area. Third, per-line funding in the lower-than-average portion of the study area may be excessive, and may over-stimulate competitive entry.

These three problems are closely linked, but unfortunately the RTF's proposal addressed only the last of the three issues and ignored the other two. As proposed by the RTF and adopted in the *Order*, geographic disaggregation is an effective tool for rural ILECs to deter competitive entry in relatively low-cost portions of their study areas – or for that matter, anywhere else in their study areas. This is possible because rural ILECs are given virtually unfettered ability to redraw study area boundary lines and to decide how much funding should be available in each portion of a study area. At the same time, competitive ETCs have essentially no rights to initiate disaggregation or to have any input regarding the geographic boundaries or amounts of funding in sub-study areas.

The *Order* does little or nothing to ensure that competitive ETCs have a reasonable opportunity to serve consumers in the highest-cost areas of rural ILECs' study areas, where the greatest amount of funding ought to be available. Instead, it gives rural ILECs latitude to direct excessive funds *not* to the geographic areas that need funding the most, but to the areas where competitive entry is least likely, and to direct inadequate amounts of funds to areas where competition is more likely.

More significantly, the *Order* does nothing to remedy the barrier to entry than can be imposed by excessively large rural study areas.

Disaggregation of study areas for funding purposes should have been aligned with disaggregation for purposes of designating competitive entrants as ETCs. Thus, where geographic boundaries are drawn to provide different amounts of funds per-line in separate portions of a study area (“funding disaggregation”), the study area has effectively been separated. In such a situation, competitive entrants should be entitled to seek ETC status in one or more, but not necessarily all, of the separate portions of the study area.

The Commission has ample evidence before it concerning these and other related problems. Since the time the RTF met and issued its recommendations, a number of proceedings should have made it clear that study area boundaries are highly significant and often problematic for prospective competitive entrants. ^{30/} The matters raised in these proceedings demonstrate the lack of transparency regarding existing boundaries (*i.e.*,

^{30/} See, *e.g.*, *Western Wireless Wyoming ETC Designation*, 16 FCC Rcd at 57-59, ¶¶ 23-24; *Western Wireless Reply Comments in Western Wireless Corporation Petition For Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, filed March 26, 2001, at 33-41; *Smith Bagley, Inc., Petitions to Redefine the Service Area of Table Top Telephone Company on Tribal Lands within the State of Arizona*, CC Docket No. 96-45, Public Notice, DA 01-814 (rel. Apr. 2, 2001); *Smith Bagley, Inc., Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and Century Tel of the Southwest, Inc., on Tribal Lands within the State of Arizona*, CC Docket No. 96-45, Public Notice, DA 01-409 (rel. Feb. 15, 2001).

competitive entrants have no way of knowing the current boundaries of study areas). Moreover, these proceedings have made it clear that, without properly structured geographic disaggregation, study area boundaries can be a barrier to entry, making competition difficult or impossible in certain rural areas. This is clearly not in the interest of rural consumers.

Thus, on reconsideration the Commission should make certain pro-competitive modifications to the RTF's proposals. First, as discussed above, the Commission's rules should provide that whenever a rural ILEC study area is disaggregated for purposes of different amounts of funding in separate sub-zones, the study area should automatically be disaggregated for purposes of ETC designation as well. 31/ The Commission only went as far as to indicate that funding disaggregation should be "considered" or "taken into account" in the context of disaggregation for ETC designation purposes. 32/ It should have required parallel funding disaggregation and entry disaggregation.

31/ The FCC should also make it clear that once disaggregation occurs, a competitive carrier's boundaries need not be congruent with the ILEC's, provided the competitive carrier, (a) proposes to serve all of the area in a wire center for which it is licensed, or (b) the state does not find the competitive carrier to have engaged in cream skimming. ILECs should not be permitted to oppose an ETC application simply because company boundaries are not congruent.

32/ Order, ¶ 164.

Second, the Commission's rules enable rural ILECs to select from a range of options regarding disaggregation. This policy is blatantly discriminatory and violates the principle of competitive neutrality. Instead, the Commission should allow competitive ETCs to have the same right as ILECs to initiate study area disaggregation. Moreover, ILECs should not be allowed to “opt out” of disaggregation (“Path 1”) if any other party objects. To the contrary, the Commission should issue an order mandating wire center disaggregation no later than six months after a prospective competitor applies for it.

Third, while CUSC does not object to a streamlined, carrier-initiated mode of disaggregation (“Path 3”), the Commission must adopt strict and specific rules governing how the amounts of funding in each sub-zone are to be calculated in order to ensure that the relative amounts are cost-justified. ^{33/} Moreover, because cost information disaggregated below the wire center level is not generally available to anyone other than ILECs, the self-certified path for disaggregation must not be available for plans that propose to split up wire centers. Rather, the Commission's rules should ensure that proponents submit such plans for approval by a state public utility commission and/or the Commission itself prior to implementation.

^{33/} Cf., Order, ¶¶ 151-54; 47 C.F.R. § 54.315(e) (adopted in *Order* at Appendix A).

Finally, CUSC strongly urges the Commission to complete its reconsideration of the geographic disaggregation rules in an expeditious and timely manner. The rural ILECs have nine months from the effective date of the *Order* to select one of the disaggregation “paths” outlined in the *Order* and the resulting rules. As a result, CUSC urges the Commission to complete its reconsideration of the instant proceeding and make modifications to its rules *prior to and well in advance of this deadline*. Doing so would provide certainty and clarity for all carriers, whether they currently receive universal service support, plan to, or are considering the matter.

CONCLUSION

In conclusion, the Commission should reconsider the *Order* as outlined above. The Commission should modify its rules to ensure that study area disaggregation and other aspects of the rural universal service rules are structured fairly and properly to promote, not hinder, fair competition among all telecommunications carriers.

Respectfully submitted,

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